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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 95 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.C. PATEL

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? YES

2. To be referred to the Reporter or not ? YES

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3. Whether Their Lordships wish to see the fair copy
of the judgement? NO

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder ? NO

5. Whether it is to be circulated to the Civil Judge?
NO

BIPINCHANDRA T SHAH

Versus

STATE OF GUJARAT

Appearance:

MS DAXA R VYAS for Petitioner

SERVED for Respondent No. 1 & 2

MS SUBHADRA G PATEL for Respondent

No. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15,

16 & 17 (Absent)

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 14/10/96

ORAL JUDGEMENT

Petitioner has approached this Court for a writ

of mandamus or any other appropriate writ, order or direction, directing the respondents to give to the petitioner all the benefits which are made available to the Government servants from the date of transfer of petitioner's services to the respondent-Panchayat till his resignation and all consequential benefits which are available to the Government servants. Petitioner was recruited on June 27, 1961 in the service and his services were with the then Municipality of Vanthali, however, in view of Gujarat Panchayats Act, 1961, the Municipality of Vanthali was converted into a Nagar Panchayat under the provisions of the Gujarat Panchayats Act, 1961 and his services came to be transferred to the respondent-Panchayat.

On conversion of Municipality into Nagar Panchayat, all the members of the staff who were in services of Municipality stood transferred to Panchayat Respondent No. 2. Petitioner has averred that he has continued to be a government servant right from June 27, 1961. It is averred by the petitioner that he is entitled to revision of pay and promotional avenues open to the Government servants. Petitioner has averred that in not granting benefits to the petitioner, the respondents have acted arbitrarily. The petitioner has further averred that the action of the respondents in not granting benefits to him is arbitrary, discriminatory and violative of Article 14 of the Constitution. This Court issued notice on 24-1-1985. No return was filed. Considering the averments made in the petition on 15-4-1985, the Court issued a Rule, which was made returnable on 1st July, 1985. Till this date, on behalf of respondents, no reply is filed. On 7th February, 1985, this Court {Coram :S.B Majmudar, J. as His Lordship then was} , passed the following order and granted interim relief:-

"By way of ad-interim relief, it is directed that the respondents shall pay the salary amount of the petitioner for the months for which his salary has not been paid forthwith, and shall go on regularly paying from month to month the petitioner's salary till further orders. The petition be posted for further orders on 21st February, 1985".

In absence of Return, the Court has issued Rule and even today, the respondents have not bothered to file reply. In absence of reply, considering the averments made in the petition, it is clear that the petitioner who was a Municipal employee, came to be transferred to the

Panchayat services and thus the petitioner achieved the status of a Government servant. The status so acquired cannot be extinguished so long as the post which the petitioner was occupying was not abolished. Moreover, his services were not terminated in accordance with the provisions of Art. 311 of the Constitution of India. The Apex Court in the case of State of Gujarat & Anr. versus Raman Lal Keshav Lal Soni & Ors., reported in AIR (1984) SC 161, has held that ... "Their status as Government servants could not be extinguished, so long as the posts were not abolished and their services were not terminated in accordance with the provisions of Art. 311 of the Constitution. Nor was it permissible to single them out for differential treatment. That would offend Art. 14 of the Constitution. Once they had joined the common stream of service to perform the same duties, it is clearly not permissible to make any classification on the basis of their origin. Such a clarification would be unreasonable and entirely irrelevant to the object sought to be achieved. It is to navigate around these two obstacles of Art. 311 and Art. 14 that the Amending Act is sought to be made retrospective, to bring about an artificial situation as if the erstwhile municipal employees never became members of a service under the State. No law can be made to destroy today's accrued constitutional rights by artificially reverting to a situation which existed seventeen years ago."

The learned advocate submitted that during the pendency of the petition, for salary several applications were required to be filed and only after the orders were passed by the court, the salary was paid. It is stated by the learned advocate that the petitioner has voluntarily retired from services on 31st December, 1990, therefore, there is no question of paying regular salary to the petitioner but the learned advocate has submitted that the State must be directed to pay the difference and other benefits. In view of the legal position, the respondents are directed to pay the amount which otherwise the petitioner is entitled to receive from the respondents, within a period of six months from today.

Rule is made absolute with costs.

Prakash*